In the District Court of the United States, for the District of Columbia

No. 167-48

UNITED STATES OF AMERICA

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF

STATEMENT AS TO JURISDICTION

In compliance with Rule 37 (a) (1) of the Federal Rules of Criminal Procedure and Rule 12 of the Rules of the Supreme Court of the United States as amended, the United States submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the district court entered in this cause on March 17, 1948, dismissing the indictment filed against the defendants.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by the Act of March 2, 1907, 34 Stat. 1246, as amended by the Act of

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May 9, 1942, 56 Stat. 271, 18 U. S. C. Supp. V 682, commonly known as the Criminal Appeals Act, and by Section 238 of the Judicial Code (28 U. S. C. 345).

STATUTE INVOLVED

Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act of 1947 (Public Law 101, 80th Cong., 1st sess., c. 120), provides:

> SEC. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation,

or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or condition of work.

THE ISSUE AND THE RULING BELOW

The indictment returned against the defendants charges a violation of Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor Management Relations Act of 1947. The first count alleges that the Congress of Industrial Organizations, a labor organization, made expenditures from the funds of the organization for the publication of a periodical, called "The CIO News," including the publication of the issue of July 14, 1947, in which, in anticipation of and in connection with the holding of a special election to elect a representative in Congress from the Third Congressional District of Maryland, there was published an article (set forth in full in the indictment) urging members of the CIO to vote for a particular candidate. The indictment al-

leges that funds of the labor organization were expended for the publication and distribution of the July 14, 1947, issue of the CIO News, and for the publication and transportation of one thousand extra copies of that issue in connection with the aforesaid election.

Defendant Philip Murray was charged in the second count with a violation of the statute in that, as president of the Congress of Industrial Organizations, he consented to the expenditures alleged in the first count.

Defendants moved to dismiss the indictment on the ground that the statute on which it is based is unconstitutional. They contended that the statute infringes the rights of free expression of opinion guaranteed by the First, Ninth, and Tenth Amendments to the Constitution; that it is too indefinite to prescribe a standard of guilt, as required by the Fifth and Sixth Amendments; and that it arbitrarily discriminates against labor organizations, in violation of the Fifth Amendment.

The district court held that the indictment charged an offense under Section 304 of the Labor Management Relations Act, but that the statute, in so far as it prohibits the expenditure of funds of a labor organization in connection with a federal election is, on its face, an unconstitutional abridgment of freedom of speech, freedom of the press, and freedom of assembly. The court was of the view that Congress was not jus-

tified, in the interests of free and clean elections, in abridging the right of free expression of opinion on the part of labor organizations to the extent to which such rights are abridged by the statute, and that the statute could not be justified as a means of preventing oppression and coercion of minorities within labor organizations.

Since the district court's decision is based specifically on the unconstitutionality of the statute on which the indictment is based, the ruling is subject to review by the Supreme Court on direct appeal. *United States* v. *Classic*, 313 U. S. 309, 399; *United States* v. *Darby*, 312 U. S. 101, 109.

THE QUESTION IS SUBSTANTIAL

The statute involved was passed over a presidential veto by an overwhelming majority of both houses of Congress. It represents the deliberate judgment of Congress that, in the interests of free and untrammeled elections, it is necessary to curb expenditures, designed to affect the outcome of federal elections, on the part of certain entities—corporations and labor organizations. The very fact that the decision here nullifies an enactment which Congress deemed necessary for the welfare of the nation, in itself establishes the substantiality of the question involved.

The district court, we submit, erred in substituting its judgment for that of Congress as to the measures necessary to secure free and untrammeled federal elections, uninfluenced by political

expenditures by large aggregate entities not organized primarily for political purposes which are enabled to exert undue weight in the electoral process. The power granted to Congress by Article I, Section 4 of the Constitution to regulate the times, places, and manner of holding elections for representatives and senators, empowers Congress to surround the entire election process with such rules and regulations as it deems necessary to secure free and honest elections. This power is basic to democratic Government. *Ex parte Yarbrough*, 110 U. S. 651, 666, 667.

The statute here involved represents a gradual development of congressional control of the power of entities to exert undue influence in federal elections. Congress first prohibited political contributions by corporations alone. Act of June 26, 1907, c. 420, 34 Stat. 864. Subsequently, it prohibited political contributions by labor organizations. War Labor Disputes Act of June 25, 1943, c. 144, § 9, 57 Stat. 167–168. Only when it found that its ban on political contributions was being evaded by political activity in the form of direct expenditures by these entities, did it undertake to prohibit political expenditures by corporations and labor organizations.

The statute here involved thus represents a deliberate legislative judgment that enforced neutrality on the part of corporations and labor organizations—entities organized primarily for

economic purposes, controlling substantial aggregations of wealth, and composed of persons not necessarily representing the same political point of view—is necessary to maintain free and untrammeled elections. And by the same token, the statute represents a deliberate legislative judgment that political activities by such entities constitute a clear and present danger to free federal elections. The district court was not justified in overruling the legislative judgment in this matter. See *United Public Workers* v. *Mitchell*, 330 U. S. 75.

Appended hereto is a copy of the opinion of the district court dated March 13, 1948.

Respectfully submitted.

Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General.

In the District Court of the United States for the District of Columbia

Criminal No. 167–48

UNITED STATES OF AMERICA, PLAINTIFF

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS, PHILIP MURRAY, OFFICER THEREOF, DEFENDANTS

On Defendants' Motion to Dismiss Indictment

Turner Smith, Esq., Special Assistant to the Attorney General, Washington, D. C.; Jesse

Climenko, Esq., Special Assistant to the Attorney General, Washington, D. C., for Plaintiff.

Charles J. Margiotti, Esq., 720 Grant Building, Pittsburgh, Pennsylvania; Lee Pressman, Esq., 9 E. 40th Street, New York, New York; Frank Donner, Esq., 718 Jackson Place, N. W., Washington, D. C., for Defendants.

BEN MOORE, *District Judge*:

OPINION

The Labor Management Relations Act recently passed by Congress imposes many conditions, restrictions, limitations and prohibitions upon labor organizations in the economic arena wherein the battles between labor and management are fought. With these economic features of the Act we are not concerned in this case. However, by one section of the Act Congress broadened its scope to include activities of labor organizations in the political field.

Section 304 (2 U. S. C. A. Sec. 251) makes it unlawful for any labor organization to make an expenditure in connection with any election at which candidates for a federal office are to be selected or voted for. The penal sanctions of this section extend also to an officer of a labor organization who consents to such an expenditure by the organization of which he is an officer.

This case arises under Section 304 of the Act.

The Congress of Industrial Organizations, conveniently referred to as CIO, publishes and cir-

culates a newspaper called the CIO News. Philip Murray is president of CIO.

On July 15, 1947, a special election was held to elect a representative in Congress in the Third Congressional District of the State of Maryland. Immediately prior to this election, in express disobedience of the provisions of Section 304 of the Labor Management Relations Act relative to expenditures by labor organizations in connection with federal elections, and for the purpose of testing their constitutionality, Murray wrote an editorial favoring one of the candidates and opposing the other, and caused it to be published in the CIO News, and circulated in the Third Congressional District of Maryland. Apparently to remove all doubt that CIO was by this act making expenditures in connection with an election, one thousand extra copies of the newspaper containing Murray's editorial were printed and circulated by CIO. The expenditures for publishing and circulating the newspaper were made in the District of Columbia, and the one thousand extra copies were mailed from there to be circulated in Maryland.

This indictment followed. It charges CIO with making expenditures in connection with a federal election by publishing and circulating the Murray editorial, and Murray as president of CIO with consenting to such expenditures.

Defendants have moved to dismiss the indictment on the broad ground that the applicable

part of Section 304 of the Act is unconstitutional because it violates the guaranties of the Bill of Rights, particularly those of the First Amendment.

The government concedes that rights guaranteed by the First Amendment are abridged by the prohibition against expenditures by labor organizations in connection with elections; but it says that Congress has power under Article I, Section 4, of the Constitution to abridge First Amendment rights if it considers such a course necessary in maintaining the purity and freedom of elections.

Thus the Court is confronted with the necessity of passing on the validity of Section 304 of the Act, insofar as it relates to expenditures by labor organizations in connection with federal elections.

I am sensible of the deference which courts must accord to the considered will of the legislative branch of the government as expressed in a statute. If a reasonable construction of the statute can logically be made under which it is free from imputation of unconstitutionality, the statute must be so interpreted. If, however, the words of the statute are plain and can have only one meaning, a court cannot escape the obligation of deciding whether or not it falls within the limits of constitutional legislative power. *Gemsco, Inc. et al* v. *Walling*, 324 U. S. 244, 260; *United States* v. *Rice*, District Judge, 327 U. S.

742, 753. By the words of this statute expenditures of a labor organization in connection with any federal election are made unlawful.[1] Regardless of whether this provision does or does not fix an ascertainable standard of guilt it is clear that the acts of CIO in publishing and circulating the editorial, and of Murray in consenting thereto, come within its scope. The editorial was written with specific reference to a particular federal election and the expenditure made for publishing and circulating it was therefore necessarily made in connection with that election. The statute contains no exemption or exclusion eliminating from its prohibitions those activities which the Bill of Rights protects. Indeed, few acts in connection with an election, other than those which have for their purpose some sort of coercion, intimidation or corrupton of the electorate could be said to be without the boundaries of such protection. It is plain that Congress by

[1] "It is unlawful for * * * any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice-Presidential electors or a Senator or Representative in * * * Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices * * * Every * * labor organization which makes any contribution or expenditure in violation of this section shall be fined * * *; and every officer * * * of any labor organization who consents to any contribution or expenditure by the * * * labor organization * * * shall be fined * * *" The section further provides penalties for its violation. 2 U. S. C. A. Sec. 251.

this statutory provision denounced as unlawful acts which would otherwise be entirely innocent in nature, and in the exercise of which a labor organization is concededly protected under the Bill of Rights. cf. *Grosjean* v. *American Press Co., Inc., et al.*, 297 U. S. 233; *Bridges* v. *California*, 314 U. S. 252. I conclude, therefore, that the indictment charges an offense under Section 304 of the Labor Management Relations Act, and it follows that if the provisions of that section, pursuant to which the indictment was returned, were constitutionally valid, the indictment would necessarily be sustained.

Judged by its plain terms, the statute on its face fails to survive the constitutional test.

I am of opinion that the questioned portion of Section 304 of the Act is an unconstitutional abridgment of freedom of speech, freedom of the press and freedom of assembly. At no time are these rights so vital as when they are exercised during, preceding or following an election. If they were permitted only at times when they could have no effect in influencing public opinion, and denied at the very time and in relation to the very matters that are calculated to give the rights value, they would lose that precious character with which they have been clothed from the beginning of our national life. cf. *Bridges* v. *California, supra*, 269.

The legislative history of the statutory provision under consideration, copiously related in

briefs of counsel for the government, clearly shows that the legislation was aimed at the very type of political activity which is charged as an offense in this indictment, namely the publication and distribution of newspapers containing editorials favoring or opposing candidates for federal office. It is insisted by the government that Congress could abridge the freedoms guaranteed by the First Amendment (which the government concedes was done here) because of its constitutional control over the manner of holding elections, and its consequent power to prevent corruption therein, and to secure clean elections. This argument would be persuasive if the statute prohibited specific acts of a kind which might conceivably be expected to produce corruption in any of its forms, or to prevent in any way the holding of free elections; but the untrammeled right of free expression of views as to candidates for office, through newspapers or other means of conveying the written or spoken word, and of the public in general to have free access thereto, far from being a conceivable means of corrupting or interfering with free elections, is in fact one of the most valuable means of promoting purity and freedom in the electoral process. See *De Jonge* v. *Oregon*, 299 U. S. 353, 365.

It must be remembered that it is not only the right of the publisher of a newspaper or editorial sheet which is protected by the First Amend-

ment; but also, and perhaps over and above that right, there is the right of the people to be informed of the views represented by conflicting interests and opinions. How are they to get such information concerning the views of laboring men and women if the organization in and through which such persons are united in a common purpose is forbidden to publish any views whatsoever?

It is contended that the evil sought to be remedied by this legislation consists in the use of money, paid into the treasury of a labor organization in the form of dues, for the purpose of publishing opinions and arguments which may not be in accord with the views of a minority of the organization. Such use of money, says the government, is fraught with implications of oppression and coercion of minorities of such import that Congress could act to prevent it, even to the extent of abridging the basic freedoms. It is doubtful whether such a contention would avail, even though the statute had been framed to cover only such cases. Inherent in the idea of collective activity is the principle that it shall be exercised on behalf of the organization pursuant to the will of the majority of its membership. This principle is recognized in the very statute of which the Labor Management Relations Act containing this Section 304 is an amendment. Labor Management Relations Act,

1947, 29 U. S. C. A. Secs. 151, 159. However, the provision prohibiting expenditures by labor organizations in connection with elections does not purport to affect only cases in which a minority of the membership, however small or great, is opposed to the expenditure. It covers all such expenditures in connection with federal elections. We cannot presume that substantial differences of opinion or desire exist in labor organizations with reference to matters concerning labor's welfare. Such organizations do not follow political party lines as such, and to say that doubtless there are in the membership large numbers of voters of differing political party affiliation is not to say that all these may not unitedly in favor of or opposed to candidates who respectively favor or oppose the type of legislation which laboring men and women in general believe to be in their best interest.

From what has been said it is plain that no clear and present danger to the public interest can be found in the circumstances surrounding the enactment of this legislation. The Supreme Court has said, and reiterated in many cases, that such a situation must exist if any abridgment of the freedoms of the First Amendment is to be justified. *Thornhill* v. *Alabama*, 310 U. S. 88; *West Virginia State Board of Education et al.* v. *Barnette et al.*, 319 U. S. 624; *Thomas* v. *Collins*, 323 U. S. 516. Nowhere is the idea better ex-

pressed than in the *Thomas* case, wherein Mr. Justice Rutledge, speaking for the majority of the Court, says:

> The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice.
>
> For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount

interests, give occasion for permissible limitation.

Further on in the same opinion Mr. Justice Rutledge continues:

> Where the line shall be placed in a particular application rests * * * on the concrete clash of particular interests and the community's relative evaluation both of them and of how the one will be affected by the specific restriction, the other by its absence. That judgment in the first instance is for the legislative body. But in our system where the line can constitutionally be placed presents a question this Court cannot escape answering independently, whatever the legislative judgment, in the light of our constitutional tradition. And the answer, under the tradition, can be affirmative, to support an intrusion upon this domain, only if grave and impending public danger requires this.

In support of its argument that congressional control over elections may be exercised in abridgment of rights protected by the First Amendment, the government points to the case of *United Public Workers* v. *Mitchell*, 330 U. S. 75. As I read that case the decision turned, not on the power of Congress to regulate elections, but on the right of the government to prescribe rules concerning the conduct of its own employees. cf. *United States* v. *Wurzbach*, 280 U. S. 398. The activities in which Mitchell had engaged and

which resulted in his dismissal were, accepting office as a committeeman of a political party, and acting as paymaster for party workers. Such conduct can hardly be said to be comparable to the printing and circulating of editorial opinions by a person or group of persons not connected with either the government or a political party. I am unable to perceive that the views expressed herein are in any way at variance with the holding in the *Mitchell* case. Moreover, the *Mitchell* case and all the other cases cited by the government dealing with congressional authority over elections extend only to the regulation of political activities. In no other statute except the one we are considering here have I found that Congress has prohibited absolutely all activities of any person or group at elections. The prohibition in this statute against expenditures by labor organizations in effect would prevent such organizations from doing any act in connection with an election, since they are composite entities and not individuals, and by their very nature can make no move which does not involve some expenditure.

Defendants contend that the legislation is vulnerable also as an arbitrary discrimination against labor organizations in violation of the Fifth Amendment, and because it does not fix an ascertainable standard of guilt, as required by the Fifth and Sixth Amendments. I do not

deem it essential to decide these questions, since I have concluded that the challenged provision of the statute is invalid because of abridgment of rights guaranteed by the First Amendment.

For the reasons given, the motion of defendants to dismiss the indictment will be sustained. An appropriate order may be presented for entry.

(S) BEN MOORE,
United States District Judge.

WASHINGTON, D. C., *March 13, 1948.*

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